

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA

Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY (“HTA”),

Debtor.

PROMESA

Title III

No. 17 BK 3567-LTS

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

PROMESA

Title III

Adv. Proc. No. 20-00003-LTS

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK- 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORP., FINANCIAL GUARANTY
INSURANCE COMPANY and U.S. BANK TRUST
NATIONAL ASSOCIATION, as Trustee

Defendants.

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORPORATION, FINANCIAL
GUARANTY INSURANCE COMPANY and THE
BANK OF NEW YORK MELLON, as Trustee

Defendants.

PROMESA
Title III

Adv. Proc. No. 20-00004-LTS

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as a representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORP., ASSURED GUARANTY
MUNICIPAL CORP., NATIONAL PUBLIC
FINANCE GUARANTEE CORPORATION,
FINANCIAL GUARANTY INSURANCE
COMPANY, PEAJE INVESTMENTS LLC, and THE
BANK OF NEW YORK MELLON, as Fiscal Agent

Defendants.

PROMESA
Title III

Adv. Proc. No. 20-00005-LTS

**JOINT INFORMATIVE MOTION IN COMPLIANCE WITH ORDER GRANTING
OPPOSED URGENT MOTION OF THE GOVERNMENT PARTIES FOR LEAVE TO FILE
SUR-REPLIES AND TO ADJOURN THE PRELIMINARY HEARING REGARDING THE
REVENUE BOND LIFT STAY MOTIONS TO JUNE 4, 2020 [ECF No. 13068]**

To the Honorable United States District Judge Laura Taylor Swain:

1. The Commonwealth of Puerto Rico (“Commonwealth”), by and through the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”), Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp., Assured Guaranty Municipal Corp. (together, “Assured”), National Public Finance Guarantee Corporation (“National”), and Financial Guaranty Insurance Company (“EGIC”) (and, together with Ambac, Assured, and National, the “Monolines”), The Bank of New York Mellon, as trustee and fiscal agent (“BNYM”), and U.S. Bank Trust National Association, as trustee (“U.S. Bank”), (collectively, the “Parties”)² respectfully submit this joint informative motion (the “Informative Motion”) in compliance with the *Order Granting Opposed Urgent Motion of the Government Parties for Leave to File Sur-Replies and to Adjourn the Preliminary Hearing Regarding the Revenue Bond Lift Stay Motions to June 4 2020* [ECF No. 13068] (the “Sur-reply Order”). The Sur-reply Order directed the Parties to meet and confer regarding the schedule in connection with the motions for partial summary judgment in Adversary Proceeding Nos. 20-003, 20-004, and 20-005 (the “Motions for Partial Summary Judgment”) and to file, no later than 5:00 p.m. (Atlantic Standard Time) on May 13, 2020, an informative motion either proposing a consensual modified schedule or identifying any disputes regarding any requested modifications to the current schedule.

2. For context, the Parties note that, pursuant to this Court’s Order dated April 8, 2020 [ECF No. 50]: responses to the Motions for Partial Summary Judgment are currently due to be filed by May 27, 2020, at 5 p.m. (Atlantic Standard Time); replies in support of the Motions for Partial Summary Judgment are due to be filed by June 16, 2020, at 5 p.m. (Atlantic Standard Time); and, the hearing

² Counsel for the Official Committee of Unsecured Creditors (the “Committee”) has indicated that the Committee takes no position regarding this informative motion.

related thereto is currently scheduled to be held on June 23, 2020, in New York, at a time (along with hearing logistics) to be determined by the Court.

3. In accordance with the Sur-reply Order, the Parties met and conferred by telephone on May 11, 2020, and thereafter exchanged several emails in an effort to arrive at an agreed schedule. While those discussions were productive and the Parties reached agreement on almost all issues, judicial intervention is necessary regarding an issue raised by the Monolines pertaining to the hearing date for approval of any future Disclosure Statement.

4. The Parties report they are in agreement with respect to the following adjustments to the existing schedule:

- a. The Parties' obligation to meet and confer regarding the impact of any rulings regarding the Lift Stay Motions³ shall take place on or before June 25, 2020;
- b. Responses to the Motions for Partial Summary Judgment shall be filed on July 1, 2020, at or before 5:00 p.m. (Atlantic Standard Time); and
- c. Replies in support of the Motions for Partial Summary Judgment shall be filed on August 3, 2020, at or before 5 p.m. (Atlantic Standard Time).
- d. The hearing on the Motions for Partial Summary Judgment is requested to be August 13, 2020 (with the logistics and exact time of the hearing to be determined by the Court). If the Court cannot conduct the hearing on August 13, the Parties request the hearing be on August 12, 2020.⁴

5. The Parties disagree with respect to whether the hearing should be linked in some way

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Court's March 10, 2020 *Final Case Management Order for Revenue Bonds* [ECF No. 12186].

⁴ Should the Court believe a proposed August 12 or 13, 2020, hearing date does not allow the Court adequate time to prepare for the hearing, the Parties propose that an equal amount of time be subtracted from the proposed response deadline for the Monolines' opposition and Commonwealth reply deadlines set forth in paragraph 4 herein.

to the timing of the Disclosure Statement hearing, and whether the Court can or should decide that issue now. Specifically, the Commonwealth submits that the scheduling of any Disclosure Statement hearing should be noticed and heard independent and irrespective of when a hearing takes place with respect to the hearing on the Motions for Partial Summary Judgment. The Monolines believe that the hearing on any Disclosure Statement be held no less than two weeks after the hearing on the Motions for Partial Summary Judgment, but also that it is premature for the Court to decide when the Disclosure Statement hearing should occur before a schedule for objections has even been proposed.

The Commonwealth's Position

6. The Commonwealth submits there is no reason to – as the Monolines suggest – link the timing of the hearing on the Motions for Partial Summary Judgment to any Disclosure Statement hearing. From inception, both matters have proceeded on separate and independent tracks. There is no reasoned basis to change course now. The timing of the hearing on the Disclosure Statement should be guided by the status report that is required to be filed with the Court no later than July 15, 2020. In that report, the Oversight Board will either propose a date for the hearing or suggest the filing of an additional status report at some point in the future. To date, and in various pleadings filed with the Court, the Monolines have sought to delay the Disclosure Statement timeline. While the health and economic condition of Puerto Rico will drive the timing of a Disclosure Statement and the confirmation process, the Monolines' position here is unwarranted and consistent with their prior approach. Whatever rulings the Court issues with respect to the Motions for Partial Summary Judgment may be informative and taken into account at the Disclosure Statement hearing phase, but neither one is dispositive of the other (particularly in favor of the Monolines' position),⁵ and tying the timing of the two together risks delaying one or the other – or both – for no good reason. If there is a basis to bring a motion for approval of a

⁵ A denial of the Commonwealth's Motions for Partial Summary Judgment means only that there are material issues of disputed fact that need to be resolved in a contested hearing. The Monolines chose not to file summary judgment motions of their own.

Disclosure Statement, the Commonwealth (or any other debtor) should be able to do so without linking it to a hearing on another motion, and any party in interest can raise whatever objections are just and proper at that time. Prejudging the calendaring of a Disclosure Statement hearing is premature and inconsistent with the terms of the meet and confer directed by the Court in the Sur-reply Order – which addressed only the Motions for Partial Summary Judgment.

7. For all these reasons, the Commonwealth respectfully requests the Court to enter an order substantially in the form attached hereto as **Exhibit A**.

The Defendants' Position

8. The Monolines believe that the hearing on the Motions for Partial Summary Judgment should occur at least two weeks before any hearing on a motion seeking approval of the Disclosure Statement. This would preserve the original staging of the revenue bond Motions for Partial Summary Judgment and motion for approval of the Disclosure Statement and ensure that the objections to and hearing on the Disclosure Statement are appropriately tailored. As the new schedule on the motion for approval of the Disclosure Statement has not even been submitted to the Court for consideration, the Oversight Board's objection to the Monolines' position on the relative timing of the hearings is premature, academic, and likely to be mooted by actual events. The Oversight Board's suggestion that the Monolines have sought to delay consideration of the Disclosure Statement for the purpose of delay is false. The Monolines have been and continue to be focused on ensuring that the cases proceed in an orderly manner and that key gating revenue bond-related issues (which the Oversight Board itself has acknowledged are gating issues) are considered and decided before the disclosure statement hearing. The Monolines reserve all rights in this regard, including to object to any proposed schedule relating to the Disclosure Statement on the basis that there is insufficient time between the hearing on the Motions for Partial Summary Judgment and the Disclosure Statement hearing.

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Dated: May 13, 2020
San Juan, Puerto Rico

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*Counsel for U.S. Bank Trust National
Association, as Trustee*

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer

-

EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</div>	<div>PROMESA Title III</div>
<div>as representative of</div> <div>THE COMMONWEALTH OF PUERTO RICO,</div> <div>Debtor.⁶</div>	<div>No. 17 BK 3283-LTS (Jointly Administered)</div>
<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</div>	<div>PROMESA Title III</div>
<div>as representative of</div> <div>PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY (“HTA”),</div> <div>Debtor.</div>	<div>No. 17 BK 3567-LTS</div>
<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</div>	<div>PROMESA Title III</div>
<div>as representative of</div> <div>THE COMMONWEALTH OF PUERTO RICO,</div> <div>Plaintiff,</div> <div>v.</div>	<div>Adv. Proc. No. 20-00003-LTS</div>

⁶ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK- 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORP., FINANCIAL GUARANTY
INSURANCE COMPANY and U.S. BANK TRUST
NATIONAL ASSOCIATION, as Trustee

Defendants.

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORPORATION, FINANCIAL
GUARANTY INSURANCE COMPANY and THE
BANK OF NEW YORK MELLON, as Trustee

Defendants.

PROMESA
Title III

Adv. Proc. No. 20-00004-LTS

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as a representative of

THE COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORP., ASSURED GUARANTY
MUNICIPAL CORP., NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION, FINANCIAL
GUARANTY INSURANCE COMPANY, PEAJE
INVESTMENTS LLC, and THE BANK OF NEW
YORK MELLON, as Fiscal Agent

Defendants.

PROMESA
Title III

Adv. Proc. No. 20-00005-LTS

[PROPOSED] ORDER MODIFYING SCHEDULE REGARDING MOTIONS FOR PARTIAL

SUMMARY JUDGMENT

Upon consideration of the *Joint Informative Motion in Compliance with Order Granting Opposed Urgent Motion of the Government Parties for Leave to File Sur-Replies and to Adjourn the Preliminary Hearing Regarding the Revenue Bond Lift Stay Motions to June 4, 2020* [ECF No. 13068], and the Court having found that it has jurisdiction over this matter pursuant to PROMESA Section 306; and it appearing that venue in this district is proper pursuant to PROMESA Section 307; and the Court taking note of the positions of the parties and having found good cause for the relief, it is hereby ORDERED that:

The limited summary judgment motions in Adversary Proceedings Nos. 20-003, 20-004, and 20-005, authorized by paragraph 2 of the Court's March 10, 2020 *Final Case Management Order for Revenue Bonds* [ECF No. 12186] (the "Revenue Bond Order"), shall proceed on the following schedule:

1. The Parties are directed to meet and confer on or before June 25, 2020 regarding the impact of any rulings regarding the Lift Stay Motions;
2. Responses to motions for partial summary judgment shall be filed on or before July 1, 2020, at 5 p.m. (Atlantic Standard Time);
3. Replies in support of motions for partial summary judgment shall be filed on or before August 3, 2020, at 5:00 p.m. (Atlantic Standard Time); and
4. A hearing on the motions for partial summary judgment will be held in New York on August ____, 2020, at a time to be determined by the Court. Appearance logistics shall be determined as soon as practicable in view of existing circumstances.

All other dates, deadlines and terms set forth in the Revenue Bond Order shall remain in effect until further order of the Court.

SO ORDERED.

Dated: May ___, 2020

Honorable Laura Taylor Swain
United States District Judge